106TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 106–508
Part 2

RURAL LOCAL BROADCAST SIGNAL ACT

APRIL 6, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3615]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3615) to amend the Rural Electrification Act of 1936 to ensure improved access to the signals of local television stations by multichannel video providers to all households which desire such service in unserved and underserved rural areas by December 31, 2006, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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63–631

AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Rural Local Broadcast Signal Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. PURPOSE.

The purpose of this Act is to facilitate access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations for households located in unserved areas.

SEC. 3. RURAL TELEVISION LOAN GUARANTEE BOARD.

(a) ESTABLISHMENT.—There is established the Rural Television Loan Guarantee Board (in this Act referred to as the "Board").

(b) MEMBERS.—

(1) IN GENERAL.—Subject to paragraph (2), the Board shall consist of the following members:

(A) The Secretary of the Treasury, or the designee of the Secretary.

(B) The Secretary of Agriculture, or the designee of the Secretary.

(C) The Secretary of Commerce, or the designee of the Secretary.

(2) REQUIREMENT AS TO DESIGNEES.—An individual may not be designated a member of the Board under paragraph (1) unless the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate.

(c) FUNCTIONS OF THE BOARD.—

(1) IN GENERAL.—The Board shall determine whether or not to approve loan guarantees under this Act. The Board shall make such determinations consistent with the purpose of this Act and in accordance with this subsection and section 4 of this Act.

(2) CONSULTATION AUTHORIZED.—

(A) IN GENERAL.—In carrying out its functions under this Act, the Board shall consult with such departments and agencies of the Federal Government as the Board considers appropriate, including the Department of Commerce, the Department of Agriculture, the Department of the Treasury, the Department of Justice, the Department of the Interior, the Board of Governors of the Federal Reserve System, the Federal Communications Commission, the Federal Trade Commission, and the National Aeronautics and Space Administration.

(B) RESPONSE.—A department or agency consulted by the Board under subparagraph (A) shall provide the Board such expertise and assistance as the Board requires to carry out its functions under this Act.

(3) APPROVAL BY MAJORITY VOTE.—The determination of the Board to approve a loan guarantee under this Act shall be by a vote of a majority of the Board.

SEC. 4. APPROVAL OF LOAN GUARANTEES.

(a) AUTHORITY TO APPROVE LOAN GUARANTEES.—Subject to the provisions of this section and consistent with the purpose of this Act, the Board may approve loan guarantees under this Act.

(b) REGULATIONS.—

(1) REQUIREMENTS.—The Administrator (as defined in section 5 of this Act), under the direction of and for approval by the Board, shall prescribe regulations to implement the provisions of this Act and shall do so not later than 120 days after funds authorized to be appropriated under section 15 of this Act have been appropriated in a bill signed into law.

(2) ELEMENTS.—The regulations prescribed under paragraph (1) shall—

(A) set forth the form of any application to be submitted to the Board under this Act;

(B) set forth time periods for the review and consideration by the Board of applications to be submitted to the Board under this Act, and for any other action to be taken by the Board with respect to such applications;

(C) provide appropriate safeguards against the evasion of the provisions of this Act;

(D) set forth the circumstances in which an applicant, together with any affiliate of an applicant, shall be treated as an applicant for a loan guarantee under this Act;

(E) include requirements that appropriate parties submit to the Board any documents and assurances that are required for the administration of the provisions of this Act; and

(F) include such other provisions consistent with the purpose of this Act as the Board considers appropriate.

(3) CONSTRUCTION.—(A) Nothing in this Act shall be construed to prohibit the Board from requiring, to the extent and under circumstances considered appropriate by the Board, that affiliates of an applicant be subject to certain obligations of the applicant as a condition to the approval or maintenance of a loan guarantee under this Act.

(B) If any provision of this Act or the application of such provision to any person or entity or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of this Act, or the application of such provision to such person or entity or circumstance other than those as to which it is held invalid, shall not be affected thereby.

(c) AUTHORITY LIMITED BY APPROPRIATIONS ACTS.—The Board may approve loan guarantees under this Act only to the extent provided for in advance in appropriations Acts.

(d) REQUIREMENTS AND CRITERIA APPLICABLE TO APPROVAL.—

(1) IN GENERAL.—The Board shall utilize the underwriting criteria developed under subsection (g), and any relevant information provided by the departments and agencies with which the Board consults under section 3, to determine which loans may be eligible for a loan guarantee under this Act.

(2) PREREQUISITES.—In addition to meeting the underwriting criteria under paragraph (1), a loan may not be guaranteed under this Act unless—

(A) the loan is made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which local television broadcast signals will be delivered principally to an unserved area;

(B) the proceeds of the loan will not be used for operating, advertising, or promotion expenses;

(C) the proposed project, as determined by the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to the signals of a local television station in an unserved area, and is commercially viable;

(D) the loan is provided by—

(i) an insured depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act) that is acceptable to the Board; or

(ii) a lender that is acceptable to the Board, and—

(I) has not fewer than one issue of outstanding debt that is related within the highest three rating categories of a nationally recognized statistical rating agency; or

(II) has provided financing to entities with outstanding debt from the Rural Utilities Service and which possess, in the judgment of

the Board, the expertise, capacity, and capital strength to provide financing pursuant to this Act;

(E) the loan has terms, in the judgment of the Board, that are consistent in material respects with the terms of similar obligations in the private capital market;

(F) repayment of the loan is required to be made within a term of the lesser of—

(i) 25 years from the date of the execution of the loan; or

(ii) the economically useful life, as determined by the Board or in consultation with persons or entities deemed appropriate by the Board, of the primary assets to be used in the delivery of the signals concerned; and

(G) the loan meets any additional criteria developed under subsection (g).

(3) PROTECTION OF UNITED STATES FINANCIAL INTERESTS.—The Board may not approve the guarantee of a loan under this Act unless—

(A) the Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to the review of the loan by the Board for purposes of this Act; and

(B) the Board makes a determination in writing that—

(i) to the best of its knowledge upon due inquiry, the assets, facilities, or equipment covered by the loan will be utilized economically and efficiently;

(ii) the terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the loan protect the financial interests of the United States and are reasonable;

(iii) to the extent possible, the value of collateral provided by an applicant is at least equal to the unpaid balance of the loan amount covered by the loan guarantee (the "Amount" for purposes of this clause); and if the value of collateral provided by an applicant is less than the Amount, the additional required collateral is provided by any affiliate of the applicant; and if the combined value of collateral provided by an applicant and any affiliate is not at least equal to the Amount, the collateral from such affiliate represents all of such affiliate's assets;

(iv) all necessary and required regulatory and other approvals, spectrum rights, and delivery permissions have been received for the loan, the project under the loan, and the Other Debt, if any, under subsection (f)(2)(B);

(v) the loan would not be available on reasonable terms and conditions without a loan guarantee under this Act; and

(vi) repayment of the loan can reasonably be expected.

(e) CONSIDERATIONS.—

(1) TYPE OF MARKET.—

(A) PRIORITY CONSIDERATIONS.—To the maximum extent practicable, the Board shall give priority in the approval of loan guarantees under this Act to projects that will serve the greatest number of households in unserved areas. In each instance, the Board shall consider the project's estimated cost per household to be served.

(B) PROHIBITION.—The Board may not approve a loan guarantee under this Act for a project that is designed primarily to serve 1 or more of the 40 most populated designated market areas (as that term is defined in section 122(j) of title 17, United States Code).

(2) OTHER CONSIDERATIONS.—The Board shall consider other factors, which shall include projects that would—

(A) offer a separate tier of local broadcast signals;

(B) provide lower projected costs to consumers of such separate tier; and

(C) enable the delivery of local broadcast signals consistent with the purpose of this Act by a means reasonably compatible with existing systems or devices predominantly in use.

(f) GUARANTEE LIMITS.—

(1) LIMITATION ON AGGREGATE VALUE OF LOANS.—The aggregate value of all loans for which loan guarantees are issued under this Act (including the unguaranteed portion of loans issued under paragraph (2)(A)) and Other Debt under paragraph (2)(B) may not exceed $1,000,000,000.

(2) GUARANTEE LEVEL.—A loan guarantee issued under this Act—

(A) may not exceed an amount equal to 80 percent of a loan meeting in its entirety the requirements of subsection (d)(2)(A). If only a portion of a

loan meets the requirements of that subsection, the Board shall determine that percentage of the loan meeting such requirements (the "applicable portion") and may issue a loan guarantee in an amount not exceeding 80 percent of the applicable portion; or

(B) may, as to a loan meeting in its entirety the requirements of subsection (d)(2)(A), cover the amount of such loan only if that loan is for an amount not exceeding 80 percent of the total debt financing for the project, and other debt financing (also meeting in its entirety the requirements of subsection (d)(2)(A)) from the same source for a total amount not less than 20 percent of the total debt financing for the project ("Other Debt") has been approved.

(g) UNDERWRITING CRITERIA.—Within the period provided for under subsection (b)(1), the Board shall, in consultation with the Director of the Office of Management and Budget and an independent public accounting firm, develop underwriting criteria relating to the guarantee of loans that are consistent with the purpose of this Act, including appropriate collateral and cash flow levels for loans guaranteed under this Act, and such other matters as the Board considers appropriate.

(h) CREDIT RISK PREMIUMS.—

(1) ESTABLISHMENT AND ACCEPTANCE.—The Board may establish and approve the acceptance of credit risk premiums with respect to a loan guarantee under this Act in order to cover the cost, as determined under section 504(b)(1) of the Federal Credit Reform Act of 1990, of the loan guarantee. To the extent that appropriations of budget authority are insufficient to cover the cost, as so determined, of a loan guarantee under this Act, credit risk premiums shall be accepted from a non-Federal source under this subsection on behalf of the applicant for the loan guarantee.

(2) CREDIT RISK PREMIUM AMOUNT.—

(A) IN GENERAL.—The Board shall determine the amount of any credit risk premium to be accepted with respect to a loan guarantee under this Act on the basis of—

(i) the financial and economic circumstances of the applicant for the loan guarantee, including the amount of collateral offered;

(ii) the proposed schedule of loan disbursements;

(iii) the business plans of the applicant for providing service;

(iv) any financial commitment from a broadcast signal provider; and

(v) the concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(B) PROPORTIONALITY.—To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 504(b)(1) of the Federal Credit Reform Act of 1990, of loan guarantees under this Act, the credit risk premium with respect to each loan guarantee shall be reduced proportionately.

(C) PAYMENT OF PREMIUMS.—Credit risk premiums under this subsection shall be paid to an account (the "Escrow Account") established in the Treasury which shall accrue interest and such interest shall be retained by the account, subject to subparagraph (D).

(D) DEDUCTIONS FROM ESCROW ACCOUNT.—If a default occurs with respect to any loan guaranteed under this Act and the default is not cured in accordance with the terms of the underlying loan or loan guarantee agreement, the Administrator, in accordance with subsections (h) and (i) of section 5 of this Act, shall liquidate, or shall cause to be liquidated, all assets collateralizing such loan as to which it has a lien or security interest. Any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid pursuant to this Act shall be deducted from funds in the Escrow Account and credited to the Administrator for payment of such shortfall. At such time as determined under subsection (d)(2)(F) when all loans guaranteed under this Act have been repaid or otherwise satisfied in accordance with this Act and the regulations promulgated hereunder, remaining funds in the Escrow Account, if any, shall be refunded, on a pro rata basis, to applicants whose loans guaranteed under this Act were not in default, or where any default was cured in accordance with the terms of the underlying loan or loan guarantee agreement.

(i) JUDICIAL REVIEW.—The decision of the Board to approve or disapprove the making of a loan guarantee under this Act shall not be subject to judicial review.

SEC. 5. ADMINISTRATION OF LOAN GUARANTEES.

(a) IN GENERAL.—The Administrator of the Rural Utilities Service (in this Act referred to as the "Administrator") shall issue and otherwise administer loan guarantees that have been approved by the Board in accordance with sections 3 and 4 of this Act.

(b) SECURITY FOR PROTECTION OF UNITED STATES FINANCIAL INTERESTS.—

(1) TERMS AND CONDITIONS.—An applicant shall agree to such terms and conditions as are satisfactory, in the judgment of the Board, to ensure that, as long as any principal or interest is due and payable on a loan guaranteed under this Act, the applicant—

(A) shall maintain assets, equipment, facilities, and operations on a continuing basis;

(B) shall not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under this Act;

(C) shall remain sufficiently capitalized; and

(D) shall submit to, and cooperate fully with, any audit of the applicant under section 8(a)(2) of this Act.

(2) COLLATERAL.—

(A) EXISTENCE OF ADEQUATE COLLATERAL.—An applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate collateral secures a loan guaranteed under this Act.

(B) FORM OF COLLATERAL.—Collateral required by subparagraph (A) shall consist solely of assets of the applicant, any affiliate of the applicant, or both (whichever the Board considers appropriate), including primary assets to be used in the delivery of signals for which the loan is guaranteed.

(C) REVIEW OF VALUATION.—The value of collateral securing a loan guaranteed under this Act may be reviewed by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate.

(3) LIEN ON INTERESTS IN ASSETS.—Upon the Board's approval of a loan guarantee under this Act, the Administrator shall have liens on assets securing the loan, which shall be superior to all other liens on such assets, and the value of the assets (based on a determination satisfactory to the Board) subject to the liens shall be at least equal to the unpaid balance of the loan amount covered by the loan guarantee, or that value approved by the Board under section 4(d)(3)(B)(iii) of this Act.

(4) PERFECTED SECURITY INTEREST.—With respect to a loan guaranteed under this Act, the Administrator and the lender shall have a perfected security interest in assets securing the loan that are fully sufficient to protect the financial interests of the United States and the lender.

(5) INSURANCE.—In accordance with practices in the private capital market, as determined by the Board, the applicant for a loan guarantee under this Act shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

(c) ASSIGNMENT OF LOAN GUARANTEES.—The holder of a loan guarantee under this Act may assign the loan guaranteed under this Act in whole or in part, subject to such requirements as the Board may prescribe.

(d) MODIFICATION.—The Board may approve the modification of any term or condition of a loan guarantee or a loan guaranteed under this Act, including the rate of interest, time of payment of principal or interest, or security requirements only if—

(1) the modification is consistent with the financial interests of the United States;

(2) consent has been obtained from the parties to the loan agreement;

(3) the modification is consistent with the underwriting criteria developed under section 4(g) of this Act;

(4) the modification does not adversely affect the interest of the Federal Government in the assets or collateral of the applicant;

(5) the modification does not adversely affect the ability of the applicant to repay the loan; and

(6) the National Telecommunications and Information Administration has been consulted by the Board regarding the modification.

(e) PERFORMANCE SCHEDULES.—

(1) PERFORMANCE SCHEDULES.—An applicant for a loan guarantee under this Act for a project covered by section 4(e)(1) of this Act shall enter into stipulated performance schedules with the Administrator with respect to the signals to be provided through the project.

(2) PENALTY.—The Administrator may assess against and collect from an applicant described in paragraph (1) a penalty not to exceed 3 times the interest due on the guaranteed loan of the applicant under this Act if the applicant fails to meet its stipulated performance schedule under that paragraph.

(f) COMPLIANCE.—The Administrator, in cooperation with the Board and as the regulations of the Board may provide, shall enforce compliance by an applicant, and any other party to a loan guarantee for whose benefit assistance under this Act is intended, with the provisions of this Act, any regulations under this Act, and the terms and conditions of the loan guarantee, including through the submittal of such reports and documents as the Board may require in regulations prescribed by the Board and through regular periodic inspections and audits.

(g) COMMERCIAL VALIDITY.—A loan guarantee under this Act shall be incontestable—

(1) in the hands of an applicant on whose behalf the loan guarantee is made, unless the applicant engaged in fraud or misrepresentation in securing the loan guarantee; and

(2) as to any person or entity (or their respective successor in interest) who makes or contracts to make a loan to the applicant for the loan guarantee in reliance thereon, unless such person or entity (or respective successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(h) DEFAULTS.—The Board shall prescribe regulations governing defaults on loans guaranteed under this Act, including the administration of the payment of guaranteed amounts upon default.

(i) RECOVERY OF PAYMENTS.—

(1) IN GENERAL.—The Administrator shall be entitled to recover from an applicant for a loan guarantee under this Act the amount of any payment made to the holder of the guarantee with respect to the loan.

(2) SUBROGATION.—Upon making a payment described in paragraph (1), the Administrator shall be subrogated to all rights of the party to whom the payment is made with respect to the guarantee which was the basis for the payment.

(3) DISPOSITION OF PROPERTY.—

(A) SALE OR DISPOSAL.—The Administrator shall, in an orderly and efficient manner, sell or otherwise dispose of any property or other interests obtained under this Act in a manner that maximizes taxpayer return and is consistent with the financial interests of the United States.

(B) MAINTENANCE.—The Administrator shall maintain in a cost-effective and reasonable manner any property or other interests pending sale or disposal of such property or other interests under subparagraph (A).

(j) ACTION AGAINST OBLIGOR.—

(1) AUTHORITY TO BRING CIVIL ACTION.—The Administrator may bring a civil action in an appropriate district court of the United States in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under this Act. The holder of a loan guarantee shall make available to the Administrator all records and evidence necessary to prosecute the civil action.

(2) FULLY SATISFYING OBLIGATIONS OWED THE UNITED STATES.—The Administrator may accept property in satisfaction of any sums owed the United States as a result of a default on a loan guaranteed under this Act, but only to the extent that any cash accepted by the Administrator is not sufficient to satisfy fully the sums owed as a result of the default.

(k) BREACH OF CONDITIONS.—The Administrator shall commence a civil action in a court of appropriate jurisdiction to enjoin any activity which the Board finds is in violation of this Act, the regulations under this Act, or any conditions which were duly agreed to, and to secure any other appropriate relief, including relief against any affiliate of the applicant.

(l) ATTACHMENT.—No attachment or execution may be issued against the Administrator or any property in the control of the Administrator pursuant to this Act before the entry of a final judgment (as to which all rights of appeal have expired) by a Federal, State, or other court of competent jurisdiction against the Administrator in a proceeding for such action.

(m) FEES.—

(1) APPLICATION FEE.—The Board shall charge and collect from an applicant for a loan guarantee under this Act a fee to cover the cost of the Board in making necessary determinations and findings with respect to the loan guarantee application under this Act. The amount of the fee shall be reasonable.

(2) LOAN GUARANTEE ORIGINATION FEE.—The Board shall charge, and the Administrator may collect, a loan guarantee origination fee with respect to the issuance of a loan guarantee under this Act.

(3) USE OF FEES COLLECTED.—Any fee collected under this subsection shall be used to offset administrative costs under this Act, including costs of the Board and of the Administrator.

(n) REQUIREMENTS RELATING TO AFFILIATES.—

(1) INDEMNIFICATION.—The United States shall be indemnified by any affiliate (acceptable to the Board) of an applicant for a loan guarantee under this Act for any losses that the United States incurs as a result of—

(A) a judgment against the applicant or any of its affiliates;

(B) any breach by the applicant or any of its affiliates of their obligations under the loan guarantee agreement;

(C) any violation of the provisions of this Act, and the regulations prescribed under this Act, by the applicant or any of its affiliates;

(D) any penalties incurred by the applicant or any of its affiliates for any reason, including violation of a stipulated performance schedule under subsection (e); and

(E) any other circumstances that the Board considers appropriate.

(2) LIMITATION ON TRANSFER OF LOAN PROCEEDS.—An applicant for a loan guarantee under this Act may not transfer any part of the proceeds of the loan to an affiliate.

(o) EFFECT OF BANKRUPTCY.—(1) Notwithstanding any other provision of law, whenever any person or entity is indebted to the United States as a result of any loan guarantee issued under this Act and such person or entity is insolvent or is a debtor in a case under title 11, United States Code, the debts due to the United States shall be satisfied first.

(2) A discharge in bankruptcy under title 11, United States Code, shall not release a person or entity from an obligation to the United States in connection with a loan guarantee under this Act.

SEC. 6. PROHIBITION ON USE OF FUNDS FOR SPECTRUM AUCTIONS.

Notwithstanding any other provision of this Act, no loan guarantee under this Act may be granted or used to provide funds for the acquisition of licenses for the use of spectrum in any competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

SEC. 7. PROHIBITION ON USE OF FUNDS BY INCUMBENT CABLE OPERATORS.

Notwithstanding any other provision of this Act, no loan guarantee under this Act may be granted or used to provide funds for—

(1) the extension of any cable system to any area or areas for which the cable operator of such cable system has a cable franchise, if such franchise obligates the operator to extend such system to such area or areas; or

(2) the upgrading or enhancement of the services provided over any cable system, unless such upgrading or enhancement is principally undertaken to extend services to areas outside of the previously existing franchise area of the cable operator.

SEC. 8. ANNUAL AUDIT.

(a) REQUIREMENT.—The Comptroller General of the United States shall conduct on an annual basis an audit of—

(1) the administration of the provisions of this Act; and

(2) the financial position of each applicant who receives a loan guarantee under this Act, including the nature, amount, and purpose of investments made by the applicant.

(b) REPORT.—The Comptroller General shall submit to the Congress a report on each audit conducted under subsection (a).

SEC. 9. EXEMPTION FROM MUST CARRY REQUIREMENTS.

A facility of a satellite carrier, cable system, or other multichannel video programming distributor that is financed with a loan guaranteed under this Act and that delivers local broadcast signals in a television market pursuant to the provisions of section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338, 534, or 535) shall not be required to carry in such market a greater number of local broadcast signals than the number of such signals that is carried by the cable system serving the largest number of subscribers in such market.

SEC. 10. ADDITIONAL AVAILABILITY OF BROADCAST SIGNALS IN RURAL AREAS.

(a) OPENING OF FILING FOR ADDITIONAL TRANSLATOR AND LOW-POWER STATIONS.—The Federal Communications Commission shall, in accordance with its reg-

ulations, open a filing period window for the acceptance of applications for television translator stations and low-power television stations in rural areas.

(b) DEADLINES FOR NOTICE.—The Commission shall announce the filing period window no less than 90 days prior to the commencement of the window.

SEC. 11. PREVENTION OF INTERFERENCE TO SATELLITE SERVICES APPLYING FOR RURAL LOAN GUARANTEES.

(a) TESTING FOR HARMFUL INTERFERENCE.—The Board shall approve no loan guarantee until the Federal Communications Commission has determined on the basis of a technical demonstration or, if infeasible, an analysis, that any terrestrial service proposing to operate in the satellite broadcast frequency band will not cause harmful interference to any satellite service eligible for a loan guarantee under the provisions of this Act.

(b) TECHNICAL DEMONSTRATION.—For the purpose of making the determination required by subsection (a), the demonstration or analysis shall be conducted and the results analyzed by an engineering firm or other qualified entity that is independent of any interested party. Such demonstration and resulting analysis shall be subject to public notice and comment, and shall be completed within 90 days after the date of enactment of this Act.

(c) TERRESTRIAL USES OF SATELLITE FREQUENCIES PROHIBITED.—In order to ensure that there is no harmful interference to satellite services eligible for loan guarantees under the provisions of this Act, the Federal Communications Commission shall not allocate spectrum for, or issue any license or other authorization with respect to, any terrestrial service proposing to operate in the satellite broadcast frequency band during the 90-day period described in subsection (b).

(d) DEFINITIONS.—

(1) DIRECT BROADCAST SATELLITE SERVICE FREQUENCY BAND.—The term "satellite broadcast frequency band" means the band of frequencies at 12.2 to 12.7 gigahertz.

(2) SATELLITE SERVICES.—The term "satellite services" means—

(A) all systems licensed by the Commission to operate in the direct broadcast satellite services; and

(B) all nongeostationary orbit fixed satellite service systems that may be licensed by the Commission—

(i) that are authorized, on the date of enactment of this Act, to use the satellite broadcast frequency band; or

(ii) for which applications to use such frequency band are pending before the Commission on such date.

SEC. 12. IMPROVED CELLULAR SERVICE IN RURAL AREAS.

(a) REINSTATEMENT OF APPLICANTS AS TENTATIVE SELECTEES.—

(1) IN GENERAL.—Notwithstanding the order of the Federal Communications Commission in the proceeding described in paragraph (3), the Commission shall—

(A) reinstate each applicant as a tentative selectee under the covered rural service area licensing proceeding; and

(B) permit each applicant to amend its application, to the extent necessary to update factual information and to comply with the rules of the Commission, at any time before the Commission's final licensing action in the covered rural service area licensing proceeding.

(2) EXEMPTION FROM PETITIONS TO DENY.—For purposes of the amended applications filed pursuant to paragraph (1)(B), the provisions of section 309(d)(1) of the Communications Act of 1934 (47 U.S.C. 309(d)(1)) shall not apply.

(3) PROCEEDING.—The proceeding described in this paragraph is the proceeding of the Commission In re Applications of Cellwave Telephone Services L.P, Futurewave General Partners L.P., and Great Western Cellular Partners, 7 FCC Rcd No. 19 (1992).

(b) CONTINUATION OF LICENSE PROCEEDING; FEE ASSESSMENT.—

(1) AWARD OF LICENSES.—The Commission shall award licenses under the covered rural service area licensing proceeding within 90 days after the date of the enactment of this Act.

(2) SERVICE REQUIREMENTS.—The Commission shall provide that, as a condition of an applicant receiving a license pursuant to the covered rural service area licensing proceeding, the applicant shall provide cellular radiotelephone service to subscribers in accordance with sections 22.946 and 22.947 of the Commission's rules (47 CFR 22.946, 22.947); except that the time period applicable under section 22.947 of the Commission's rules (or any successor rule) to the applicants identified in subparagraphs (A) and (B) of subsection (d)(1) shall be

3 years rather than 5 years and the waiver authority of the Commission shall apply to such 3-year period.

(3) CALCULATION OF LICENSE FEE.—

(A) FEE REQUIRED.—The Commission shall establish a fee for each of the licenses under the covered rural service area licensing proceeding. In determining the amount of the fee, the Commission shall consider—

(i) the average price paid per person served in the Commission's Cellular Unserved Auction (Auction No. 12); and

(ii) the settlement payments required to be paid by the permittees pursuant to the consent decree set forth in the Commission's order, In re the Tellesis Partners (7 FCC Rcd 3168 (1992)), multiplying such payments by two.

(B) NOTICE OF FEE.—Within 30 days after the date an applicant files the amended application permitted by subsection (a)(1)(B), the Commission shall notify each applicant of the fee established for the license associated with its application.

(4) PAYMENT FOR LICENSES.—No later than 18 months after the date that an applicant is granted a license, each applicant shall pay to the Commission the fee established pursuant to paragraph (3) for the license granted to the applicant under paragraph (1).

(5) AUCTION AUTHORITY.—If, after the amendment of an application pursuant to subsection (a)(1)(B), the Commission finds that the applicant is ineligible for grant of a license to provide cellular radiotelephone services for a rural service area or the applicant does not meet the requirements under paragraph (2) of this subsection, the Commission shall grant the license for which the applicant is the tentative selectee (pursuant to subsection (a)(1)(B) by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

(c) PROHIBITION OF TRANSFER.—During the 5-year period that begins on the date that an applicant is granted any license pursuant to subsection (a), the Commission may not authorize the transfer or assignment of that license under section 310 of the Communications Act of 1934 (47 U.S.C. 310). Nothing in this Act may be construed to prohibit any applicant granted a license pursuant to subsection (a) from contracting with other licensees to improve cellular telephone service.

(d) DEFINITIONS.—For the purposes of this section, the following definitions shall apply:

(1) APPLICANT.—The term "applicant" means—

(A) Great Western Cellular Partners, a California general partnership chosen by the Commission as tentative selectee for RSA #492 on May 4, 1989;

(B) Monroe Telephone Services L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #370 on August 24, 1989 (formerly Cellwave Telephone Services L.P.); and

(C) FutureWave General Partners L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #615 on May 25, 1990.

(2) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(3) COVERED RURAL SERVICE AREA LICENSING PROCEEDING.—The term "covered rural service area licensing proceeding" means the proceeding of the Commission for the grant of cellular radiotelephone licenses for rural service areas #492 (Minnesota 11), #370 (Florida 11), and #615 (Pennsylvania 4).

(4) TENTATIVE SELECTEE.—The term "tentative selectee" means a party that has been selected by the Commission under a licensing proceeding for grant of a license, but has not yet been granted the license because the Commission has not yet determined whether the party is qualified under the Commission's rules for grant of the license.

SEC. 13. TECHNICAL AMENDMENT.

Section 339(c) of the Communications Act of 1934 (47 U.S.C. 339(c)) is amended by adding at the end the following new paragraph:

"(5) DEFINITION.—Notwithstanding subsection (d)(4), for purposes of paragraphs (2) and (4) of this subsection, the term 'satellite carrier' includes a distributor (as defined in section 119(d)(1) of title 17, United States Code), but only if the satellite distributor's relationship with the subscriber includes billing, collection, service activation, and service deactivation.".

SEC. 14. DEFINITIONS.

In this Act:

(1) AFFILIATE.—The term "affiliate"—

(A) means any person or entity that controls, or is controlled by, or is under common control with, another person or entity; and

(B) may include any individual who is a director or senior management officer of an affiliate, a shareholder controlling more than 25 percent of the voting securities of an affiliate, or more than 25 percent of the ownership interest in an affiliate not organized in stock form.

(2) COMMON TERMS.—Except as provided in paragraph (1), any term used in this Act that is defined in the Communications Act of 1934 (47 U.S.C. 151 et seq.) has the meaning given that term in the Communications Act of 1934.

SEC. 15. AUTHORIZATIONS OF APPROPRIATIONS.

(a) COST OF LOAN GUARANTEES.—For the cost of the loans guaranteed under this Act, including the cost of modifying the loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), there are authorized to be appropriated for fiscal years 2001 through 2006, such amounts as may be necessary.

(b) COST OF ADMINISTRATION.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, other than to cover costs under subsection (a).

(c) AVAILABILITY.—Any amounts appropriated pursuant to the authorizations of appropriations in subsections (a) and (b) shall remain available until expended.

SEC. 16. SUNSET.

No loan guarantee may be approved under this Act after December 31, 2006.

PURPOSE AND SUMMARY

The purpose of H.R. 3615, the Rural Local Broadcast Signal Act, is to authorize the Federal government to subsidize the construction of cable, satellite and other multichannel video programming distribution ("MVPD") systems that can deliver local broadcast signals to unserved areas.

BACKGROUND AND NEED FOR LEGISLATION

Recent developments in the MVPD Market. The Federal Communications Commission's ("FCC's") recent report on the state of competition in the MVPD market found that incumbent cable operators maintain a dominant share of the market (82 percent). But satellite television, direct broadcast satellite ("DBS") service in particular, is gaining ground. The report found that between 1998 and 1999, DBS subscribership rose from 7.2 million households to 10.1 million households, which accounts for 12.5 percent of all MVPD subscribers.

The FCC's report also notes that satellite service will likely continue to erode cable's dominant market share, due in large part to the fact that Congress last year enacted the Satellite Home Viewer Improvements Act ("SHVIA") of 1999. SHVIA, among other things, provides satellite carriers with a compulsory license to carry local broadcast signals into their market of origination (also known as "local-into-local"). Thus, in markets where carriers offer local-into-local, consumers will have a complete alternative to cable. In fact, the largest satellite carriers have already begun providing local-into-local to the largest markets. DirecTV currently provides local-into-local to 23 metropolitan markets, and EchoStar currently provides local-into-local to 26 metropolitan markets. In the long run, DirecTV and Echostar will be offering local-into-local to about 70 percent of American households.

For the remaining 30 percent of American households, most of which are located in sparsely populated rural areas, consumers will still have the same options that existed prior to SHVIA. In other

words, most of these consumers will have access to their local broadcast signals through either over-the-air reception and/or cable retransmission of local signals. Industry analysts and the FCC note that probably less than one percent of all television households in the United States (*e.g.*, somewhere between 800,000 and 1 million) have no access to an over-the-air signal. In addition, analysts note that, while only 65 percent of American homes *subscribe* to cable service, 97 percent of all American homes are *passed* by a cable operator that offers MVPD access to local broadcast signals.

Nevertheless, the likelihood that incumbent satellite carriers will not provide local-into-local in many rural areas has led some to call for government intervention. H.R. 3615, and its companion in the Senate (S. 2097), would authorize the Rural Utilities Service (an agency within the Department of Agriculture) to subsidize the MVPD industry's deployment and/or modification of multichannel systems that will enable the delivery of local broadcast signals to rural areas.

The Rural Utilities Service (RUS). Among other things, the RUS (which used to be known as the Rural Electrification Administration ("REA")) is charged with making direct loans, as well as guaranteeing private loans, to rural telephone companies and rural electric utilities for the purpose of developing local infrastructure. The Inspector General ("IG") for the Department of Agriculture recently completed two audits of the telephone and electric utility loan programs. The IG's audit of the telephone loan program, which was released in February 2000, found:

- that notwithstanding the General Accounting Office's similar findings in 1998, the "RUS continues to make and service loans to financially strong borrowers who likely could obtain financing from other sources;"
- that the "RUS has not established procedures and requirements for financially strong borrowers to seek credit from other sources," and,
- that the RUS has not "established a loan graduation program for borrowers who no longer need Government assistance."

With regard to the RUS' electric utility loan program, the IG's March 2000 audit of that program examined the outside investment activity of utilities that had received direct or guaranteed financing from the RUS. Current law provides that an electric utility that borrows from the RUS is permitted to make outside investments of up to 15 percent of the utility's total value without RUS approval—*provided* the utility invests in the rural community in which it is located.

But the IG's audit of the electric utility loan program found that most RUS borrowers are failing to re-invest in their rural communities. The audit estimated that, based on a statistical sample from 1997, the electric utility borrowers made approximately $10.9 billion in outside investments, but that these same borrowers invested only *one-half of one percent* of that sum in rural infrastructure development. The audit concluded that borrowers invested primarily in the stock and bond markets, and that some borrowers made no investments whatsoever in rural infrastructure development.

HEARINGS

The Subcommittee on Telecommunications, Trade, and Consumer Protection held a legislative hearing on March 16, 2000. The Subcommittee received testimony from: The Honorable Bob Goodlatte, M.C., the sponsor of H.R. 3615; Mr. Dan L. Crippen, Director, Congressional Budget Office (CBO); Mr. Christopher A. McLean, Acting Administrator, Rural Utilities Service; Mr. Roger C. Viadero, Inspector General, Department of Agriculture; and Mr. R. Kent Parsons, Vice President, National Translators Association (NTA).

COMMITTEE CONSIDERATION

On March 23, 2000, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 3615, the Rural Local Broadcast Signal Act for Full Committee consideration, as amended, by a voice vote. The Full Commerce Committee met in open markup session on March 29, 2000, and ordered H.R. 3615 reported, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3615 reported. A motion by Mr. Bliley to order H.R. 3615 reported to the House, without amendment, was agreed to by a voice vote.

The following amendments were agreed to by voice vote:

An amendment by Mr. Tauzin, No. 3, limiting the number of local broadcast signals that must be carried by a multichannel video programming distributor in a particular market to no more than the number of local broadcast signals carried by the cable system serving the largest number of subscribers in the market;

An amendment by Mr. Oxley, No. 8, conditioning approval of any loan guarantees under the bill to the FCC conducting an independent test of harmful interference to satellite services that are eligible for loan guarantees (The amendment was modified to change the period in which the independent test was to occur from 180 days to 90 days by unanimous consent); and,

An amendment by Mrs. Cubin, No. 11, redefining the term "satellite carrier" for the purpose of determining which entities may submit consumer waivers for distant signal eligibility.

The following amendment was not agreed to by voice vote:

An amendment by Mr. Cox, No. 2, imposing a $200 million cap on appropriations for loan subsidy costs under the bill.

The Committee took other action on the following amendments:

An amendment by Mr. Markey, No. 1, requiring that borrowers seek loans from commercial lenders on reasonable terms before obtaining guaranteed loans from the

Rural Utilities Service (RUS), was not agreed to by a division vote of 6 yeas and 24 nays;

An amendment by Mrs. Wilson, No. 6, carving out public booster and translator stations, as well as instructional television fixed service (ITFS), from the FCC's competitive bidding authority, was withdrawn by unanimous consent;

An amendment by Mr. Stupak, No. 9, adding a new title of the bill directing the FCC to initiate a proceeding to provide federal universal service support for the deployment of broadband service to eligible rural communities, was ruled nongermane by the Chair; and,

An amendment by Mr. Lazio, No. 12, authorizing appropriations of $10 million for fiscal year 2000 for public television stations' transition to digital television, was withdrawn by unanimous consent.

The Committee took record votes on the following amendments:

A substitute amendment by Mr. Markey for the amendment offered by Mr. Tauzin, No. 3a, providing that MVPDs that obtain guaranteed loans are not subject to must-carry requirements for any local broadcast station, unless that station broadcasts 7 hours a week of local news, public affairs, sports, weather, or other locally-originated programming;

An amendment by Mr. Cox, No. 4, requiring the Board to collect a "loan guarantee origination fee" to cover the administrative costs of the program;

An amendment by Mr. Largent, No. 5, defining the term "unserved areas" to be those areas outside local broadcast stations' grade A contours and those areas where consumers have no access to any MVPD that offers local broadcast signals;

An amendment by Mr. Cox, No. 7, requiring that at least one of the officers or directors of an applicant for a loan guarantee under the bill personally guarantee the repayment of sums owed the United States as a result of default on the loan; and,

An amendment by Mr. Cox, No. 10, accelerating the sunset date for the program from 2006 to 2004.

The vote totals and names of Members voting for and against each amendment follow:

Committee on Commerce

One Hundred Sixth Congress

Record Vote #27

Bill: H.R. 3615, the Rural Local Broadcast Signal Act
Amendment or Motion: Substitute amendment offered by Mr. Markey, #3a
Disposition: NOT AGREED TO, by a record vote of 8 yeas and 37 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley	X			Mr. Dingell		X	
Mr. Tauzin		X		Mr. Waxman		X	
Mr. Oxley	X			Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton				Mr. Boucher	X		
Mr. Upton		X		Mr. Towns		X	
Mr. Stearns		X		Mr. Pallone			
Mr. Gillmor		X		Mr. Brown		X	
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal				Mr. Rush		X	
Mr. Largent	X			Ms. Eshoo		X	
Mr. Burr		X		Mr. Klink			
Mr. Bilbray		X		Mr. Stupak		X	
Mr. Whitfield		X		Mr. Engel		X	
Mr. Ganske		X		Mr. Sawyer		X	
Mr. Norwood		X		Mr. Wynn		X	
Mr. Coburn		X		Mr. Green			
Mr. Lazio		X		Ms. McCarthy		X	
Ms. Cubin		X		Mr. Strickland		X	
Mr. Rogan		X		Ms. DeGette		X	
Mr. Shimkus		X		Mr. Barrett	X		
Ms. Wilson		X		Mr. Luther	X		
Mr. Shadegg				Ms. Capps		X	
Mr. Pickering		X					
Mr. Fosella		X					
Mr. Blunt							
Mr. Bryant		X					
Mr. Ehrlich							

Committee on Commerce

One Hundred Sixth Congress

Record Vote #28

Bill: H.R. 3615, the Rural Local Broadcast Signal Act
Amendment or Motion: Amendment offered by Mr. Markey, #4
Disposition: NOT AGREED TO, by a record vote of 16 yeas and 20 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley	X			Mr. Dingell			
Mr. Tauzin	X			Mr. Waxman			
Mr. Oxley	X			Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall			
Mr. Barton				Mr. Boucher		X	
Mr. Upton		X		Mr. Towns			
Mr. Stearns	X			Mr. Pallone		X	
Mr. Gillmor		X		Mr. Brown		X	
Mr. Greenwood				Mr. Gordon			
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal				Mr. Rush		X	
Mr. Largent	X			Ms. Eshoo		X	
Mr. Burr				Mr. Klink			
Mr. Bilbray	X			Mr. Stupak		X	
Mr. Whitfield				Mr. Engel			
Mr. Ganske		X		Mr. Sawyer		X	
Mr. Norwood	X			Mr. Wynn		X	
Mr. Coburn	X			Mr. Green		X	
Mr. Lazio	X			Ms. McCarthy		X	
Ms. Cubin		X		Mr. Strickland		X	
Mr. Rogan	X			Ms. DeGette		X	
Mr. Shimkus		X		Mr. Barrett			
Ms. Wilson	X			Mr. Luther	X		
Mr. Shadegg				Ms. Capps		X	
Mr. Pickering							
Mr. Fosella	X						
Mr. Blunt							
Mr. Bryant	X						
Mr. Ehrlich							

Committee on Commerce

One Hundred Sixth Congress

Record Vote #29

Bill: H.R. 3615, the Rural Local Broadcast Signal Act
Amendment or Motion: Amendment offered by Mr. Largent, #5
Disposition: NOT AGREED TO, by a record vote of 11 yeas and 31 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley	X			Mr. Dingell			
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey		X	
Mr. Bilirakis	X			Mr. Hall			
Mr. Barton				Mr. Boucher		X	
Mr. Upton		X		Mr. Towns			
Mr. Stearns		X		Mr. Pallone		X	
Mr. Gillmor	X			Mr. Brown		X	
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal				Mr. Rush		X	
Mr. Largent	X			Ms. Eshoo		X	
Mr. Burr		X		Mr. Klink			
Mr. Bilbray	X			Mr. Stupak		X	
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske	X			Mr. Sawyer			
Mr. Norwood		X		Mr. Wynn		X	
Mr. Coburn	X			Mr. Green		X	
Mr. Lazio		X		Ms. McCarthy		X	
Ms. Cubin		X		Mr. Strickland		X	
Mr. Rogan		X		Ms. DeGette		X	
Mr. Shimkus		X		Mr. Barrett	X		
Ms. Wilson		X		Mr. Luther		X	
Mr. Shadegg				Ms. Capps		X	
Mr. Pickering		X					
Mr. Fosella	X						
Mr. Blunt							
Mr. Bryant		X					
Mr. Ehrlich	X						

Committee on Commerce

One Hundred Sixth Congress

Record Vote #30

Bill: H.R. 3615, the Rural Local Broadcast Signal Act
Amendment or Motion: Amendment offered by Mr. Cox, #7
Disposition: NOT AGREED TO, by a record vote of 7 yeas and 28 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley				Mr. Dingell			
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey		X	
Mr. Bilirakis		X		Mr. Hall			
Mr. Barton				Mr. Boucher		X	
Mr. Upton		X		Mr. Towns			
Mr. Stearns	X			Mr. Pallone		X	
Mr. Gillmor		X		Mr. Brown		X	
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush		X	
Mr. Largent				Ms. Eshoo		X	
Mr. Burr				Mr. Klink			
Mr. Bilbray				Mr. Stupak		X	
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske	X			Mr. Sawyer			
Mr. Norwood		X		Mr. Wynn		X	
Mr. Coburn	X			Mr. Green			
Mr. Lazio		X		Ms. McCarthy			
Ms. Cubin		X		Mr. Strickland		X	
Mr. Rogan		X		Ms. DeGette		X	
Mr. Shimkus		X		Mr. Barrett		X	
Ms. Wilson		X		Mr. Luther			
Mr. Shadegg	X			Ms. Capps			
Mr. Pickering							
Mr. Fosella	X						
Mr. Blunt							
Mr. Bryant	X						
Mr. Ehrlich		X					

Committee on Commerce

One Hundred Sixth Congress

Record Vote #31

Bill: H.R. 3615, the Rural Local Broadcast Signal Act
Amendment or Motion: Amendment offered by Mr. Cox, #10
Disposition: NOT AGREED TO, by a record vote of 17 yeas and 17 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley	X			Mr. Dingell			
Mr. Tauzin	X			Mr. Waxman			
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis	X			Mr. Hall			
Mr. Barton				Mr. Boucher		X	
Mr. Upton	X			Mr. Towns			
Mr. Stearns				Mr. Pallone			
Mr. Gillmor	X			Mr. Brown		X	
Mr. Greenwood				Mr. Gordon		X	
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal				Mr. Rush			
Mr. Largent	X			Ms. Eshoo		X	
Mr. Burr				Mr. Klink			
Mr. Bilbray	X			Mr. Stupak		X	
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske				Mr. Sawyer		X	
Mr. Norwood	X			Mr. Wynn		X	
Mr. Coburn	X			Mr. Green		X	
Mr. Lazio	X			Ms. McCarthy			
Ms. Cubin		X		Mr. Strickland			
Mr. Rogan	X			Ms. DeGette		X	
Mr. Shimkus		X		Mr. Barrett		X	
Ms. Wilson	X			Mr. Luther		X	
Mr. Shadegg	X			Ms. Capps		X	
Mr. Pickering							
Mr. Fosella							
Mr. Blunt							
Mr. Bryant	X						
Mr. Ehrlich	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee concurs in the finding of the Congressional Budget Office that H.R. 3615, the Rural Local Broadcast Signal Act, would result in new or increased budget authority, entitlement authority, or tax expenditures or revenues as described in the cost estimate prepared pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 6, 2000.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3615, the Rural Local Broadcast Signal Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Kathleen Gramp (for federal costs), and Shelley Finlayson (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3615—Rural Local Broadcast Signal Act

Summary: H.R. 3615 would establish a loan guarantee program for certain companies to provide local television service to areas of the country that do not receive local television stations from satellite companies. The bill would authorize the Administrator of the Rural Utilities Service (RUS) at the Department of Agriculture to guarantee up to 80 percent of private loans authorized to be made to qualified borrowers. The bill would authorize the appropriation of amounts necessary for the costs of the loan guarantees for up to $1 billion of private borrowing, and associated administrative expenses. Qualifying loans would be payable in full within the lesser of 25 years or the useful life of the assets purchased. The authority to guarantee loans would be contingent upon future appropriation action and would expire on December 31, 2006.

Other provisions in the bill would direct the Federal Communications Commission (FCC) to allow certain television stations to file license applications, award rural cellular telephone licenses to selected entities, and conduct a study related to direct broadcast services. Finally, the bill would change the definition of satellite carriers under telecommunications law to include distributors of satellite television services, which would allow customers to receive distant network signals.

CBO estimates that implementing H.R. 3615 would increase discretionary spending by a total of $210 million over the 2000–2005 period, assuming appropriation of the necessary amounts. We estimate that provisions in section 11 regarding rural cellular licenses would reduce offsetting receipts (a form of direct spending) by about $1 million in 2001. The provision in section 14 that would redefine the term "satellite carrier" would have a negligible affect on collections and distributions made by the Copyright Office. Because H.R 3615 would affect direct spending and receipts, pay-as-you-go procedures would apply. H.R. 3615 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: For the purpose of this estimate, CBO assumes that H.R. 3615 will be enacted in fiscal year 2000 and that funds will be provided for its implementation each year. The estimated budgetary impact of H.R. 3615 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	6	196	2	2	2	2
Estimated Outlays	3	129	72	2	2	2
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	1	(1)	(1)	(1)	(1)
Estimated Outlays	0	1	(1)	(1)	(1)	(1)
CHANGES IN REVENUES						
Estimated Revenue Increase	0	(1)	(1)	(1)	(1)	(1)

[1] Less than $500,000.

Spending subject to appropriation

CBO estimates that implementing the loan program authorized by this bill would cost $210 million over the 2001–2005 period, subject to appropriation of the necessary amounts. Under procedures established by the Federal Credit Reform Act of 1990, the subsidy cost of a loan guarantee is the estimated long-term cost to the government, calculated on a net present value basis (excluding administrative costs). We estimate that the loan guarantees provided under the bill would cost about 20 percent of the total amount borrowed—or $200 million, subject to appropriation of the necessary funds. The bill would authorize the Administrator of the RUS to charge fees, which would offset some of the subsidy costs, but this estimate assumes no such fees would be charged.

To prepare this estimate, CBO consulted with industry experts and investment analysts and examined the credit ratings of firms in the satellite television and related industries. The information on credit ratings is useful because different credit ratings reflect analysts' expectations of defaults. Based on this information, we assume that the rural television loans likely to be guaranteed under this bill would have a credit risk comparable to debt rated as "B" and "CCC," which typically have default rates ranging from about 30 percent to 45 percent, respectively.

In addition, CBO estimates that administering the loan program would cost about $5 million in 2000 and about $2 million in each subsequent year. The bill would require the Secretary of Agriculture to charge fees to offset some of the administrative costs. Based on the amount of fees collected under other federal credit programs, CBO expects the RUS would charge a 0.5 percent fee and collect $5 million in 2001.

Finally, H.R. 3615 would direct the FCC to conduct a study within 90 days after enactment on the compatibility of satellite and terrestrial services in the 12.2 gigahertz to 12.7 gigahertz band now used for direct broadcast services. According to the FCC, this study would cost about $500,000 in 2000. Under current law, the FCC is authorized to collect fees to cover costs related to its regulatory, enforcement, and other functions. Because such fees typically are assessed in June, the commission probably would be unable to offset this additional expense until the next billing cycle. Hence, assuming appropriation of the necessary amounts in 2000 and assuming the commission could collect the fees in 2001, CBO estimates that this provision would increase discretionary outlays by $500,000 in fiscal year 2000 but reduce outlays by a corresponding amount in 2001.

Direct spending and revenues

H.R. 3615 would designate certain companies for the award of cellular telephone licenses in three rural service areas: one in the Florida Keys, one in northeastern Pennsylvania, and one in southern Minnesota. These companies would be awarded the licenses within 90 days after enactment if they satisfy certain license requirements and agree to pay a fee within 18 months after receiving the licenses. For purposes of this estimate, CBO assumes that the companies would comply with these conditions, and we estimate that offsetting receipts from the fees would be $1 million less than

the amounts that would have been collected if the licenses were awarded through competitive bidding. (Offsetting receipts are a credit against direct spending.) Thus, this provision would increase direct spending by about $1 million in 2001.

Under current law, satellite carriers pay a monthly royalty fee for each subscriber to the U.S. Copyright Office for the right to retransmit distant network signals by satellite to certain subscribers for private home viewing. This fee is recorded on the budget as a governmental receipt (i.e., a revenue). The Copyright Office later distributes (without further appropriation) the fees with interest to those who own copyrights on the material retransmitted by satellite. Such fees are about $0.15 per subscriber per channel per month through December 31, 2004. H.R. 3615 would expand the definition of satellite carriers to include satellite distributors. This would allow some customers of such satellite distributors to receive distant network signals. Based on information from the satellite broadcast industry, CBO estimates that the additional royalty fees collected and subsequently distributed by the Copyright Office for such signals would be less than $500,000 a year over the 2000–2005 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	1	0	0	0	0	0	0	0	0	0
Changes in receipts	Not applicable										

Intergovernmental and private-sector impact: H.R. 3615 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments. These governments may experience some minimal benefits to the extent that they wish to file applications for television translator stations and low-power television stations in rural areas. The bill would require the FCC to establish and announce an open filing period during which some applications could be filed.

Previous CBO estimates: On March 1, 2000, CBO transmitted a cost estimate for H.R. 3615, as ordered reported by the House Committee on Agriculture on February 16, 2000. That bill would authorize the RUS to guarantee 100 percent of the value of loans made for this purpose—up to $1.25 billion in private borrowing. It also would allow the government's guarantee to be subordinate to third-party financing. CBO estimated that implementing the Agriculture Committee's version of H.R. 3615 would cost $365 million over the 2000–2005 period, subject to appropriate of the necessary funds.

On March 15, 2000, CBO transmitted a cost estimate for S. 2097, the Launching Our Communities' Access to Local Television Act of 2000, as ordered reported by the Senate Committee on Banking,

Housing, and Urban Affairs on March 8, 2000. That bill would authorize the RUS to guarantee 80 percent of the value of loans made for this purpose—up to $1.25 billion in private borrowing. CBO estimated that implementing S. 2097 would cost $265 million over the 2000–2005 period, subject to appropriation of the necessary funds.

Estimate prepared by: Federal costs: Mark Hadley and Kathleen Gramp. Federal revenues: Hester Grippando. Impact on State, local, and tribal governments: Shelley Finlayson. Impact on the private sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

Section 1 provides the short title of the bill, the "Rural Local Broadcast Signal Act," and lists a table of contents.

Section 2. Purpose

Section 2 establishes the purpose of the Act as facilitating access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations for households located in unserved areas.

Section 3. Rural Television Loan Guarantee Board

Section 3 establishes and describes the responsibilities of the Rural Television Loan Guarantee Board ("the Board"). The Board is made up of three members: the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce. Each members of the Board may appoint a designee, provided the des-

ignee is an officer of the United States who has been appointed by the President with the advice and consent of the Senate.

The Board is responsible for determining which entities will receive loan guarantees under the Act. The Board must consult with such departments and agencies of the Federal Government as it considers appropriate to carry out its responsibilities under the Act, and these departments and agencies are required to assist the Board. Loan guarantees may be made only with the approval of a majority of the Board.

Section 4. Approval of loan guarantees

Section 4 authorizes the Board to approve loan guarantees. The Administrator of the Rural Utilities Service (RUS) will prescribe regulations to implement the Act under the direction of and for approval by the Board. The regulations will include provisions for the time period to review applications, safeguards against evasion of the provisions of the Act, the description of who will be considered an applicant, and requirements for the submission of documents and other information necessary for the administration of the provisions of the Act. The Board is authorized to approve loan guarantees only to the extent that funds for this purpose are provided for in advance in appropriations acts.

Section 4 also stipulates the requirements that must be met in order for a loan guarantee to be approved. Specifically, the loan to be guaranteed must be used to finance the means by which local television signals will be delivered principally to an unserved area, and the proceeds from such loan may not be used for operating, advertising, or promotional expenses. The proposed project, as determined by the National Telecommunications and Information Administration (NTIA), may not have a substantial adverse effect on competition that outweighs the benefits of the proposed project.

In addition, the proposed project, in the estimation of the NTIA, must be commercially viable. The Committee expects that, in assessing commercial viability, NTIA will ensure that the loan applicant has demonstrated that the proposed project will be forward compatible with the conversion to digital television. To this end, NTIA and the Board must determine that the loan applicant has a plan that demonstrates that the proposed local television signal delivery system will be forward compatible and in compliance with the digital television rollout requirement in section 336 of the Communications Act of 1934, as amended (47 U.S.C. § 336).

The loan must also be provided by certain qualifying lenders, including depository institutions that are insured by the Federal Deposit Insurance Corporation. The loan may not be for a term longer than 25 years or the economically useful life of the asset, whichever is less.

Other requirements for approval of a loan guarantee include a written determination that the collateral is sufficient to protect U.S. financial interests. To this end, the Board must determine that the collateral is equal to the unpaid balance of the loan amount covered by the loan guarantee. If such collateral is of a lower amount, then the collateral of an affiliate of the applicant must be added to the existing collateral. If necessary to meet requirements for sufficient collateral under the Act, the assets of the

applicant and all assets from any affiliate can be required. Finally, the Board must determine in writing that all necessary and required regulatory approvals have been received for the loan and the project that is associated with the loan, that the loan would not have been available on reasonable terms and conditions without the guarantee provided under the Act, and that there is a reasonable expectation by the Board that the loan will be repaid.

The Board will prioritize applicants for loan guarantees using certain criteria. The Board's chief priority will be for projects that serve the greatest number of households in unserved areas. The Board must also consider the cost per household served for the proposed projects. The Board may not approve a loan guarantee for a project that is designed primarily to serve one or more of the 40 most populated designated market areas.

The aggregate value of all loans for which loan guarantees may be issued under this Act cannot exceed $1 billion, but otherwise there is no minimum or maximum value required for a loan guarantee. The Board may guarantee up to 80 percent of that portion of a loan that will be used to provide local television signals and that otherwise meets the requirements established by the Board and the Act. The 80 percent loan guarantee may take one of two forms. The guarantee may represent up to 80 percent of a loan that comprises all (100 percent) of the debt associated with a project meeting the purposes of the Act. Alternatively, the guarantee may represent a full guarantee (100 percent) of a loan that comprises up to 80 percent of the debt associated with a project. Under this second scenario, the same lender must provide all of the financing for the project, including both the guaranteed and the unguaranteed portions.

The Board also is authorized to establish and accept credit risk premiums with respect to loan guarantees under the Act. To the extent appropriations of budget authority are not sufficient to cover the cost of loan guarantees under the Act, the Board must require credit risk premiums from applicants to cover this shortfall. Credit risk premiums will be paid into an account established in the Treasury and shall accrue interest. The Board shall use the proceeds of this account to cover any shortfall between a guaranteed amount paid pursuant to the Act and the net proceeds earned upon liquidation of all assets used as collateral for the loan. When all loans guaranteed by the Act have been repaid or otherwise satisfied, the Board will refund any remainder in the account to those borrowers who did not default or who cured any default, on a pro rata basis.

Section 5. Administration of loan guarantees

Section 5 provides that the Administrator of the Rural Utilities Service ("Administrator") will be responsible for administering loan guarantees issued pursuant to the Act. The Administrator will enforce the terms and conditions specified by the Board and monitor the performance of loans guaranteed by the Board.

The Administrator will have superior status to all other lienholders on assets used to secure a loan guaranteed under the Act and a perfected security interest in such assets. The Administrator must also ensure that an applicant has obtained sufficient

insurance. The Board may approve the modification of a loan guarantee under this Act, provided the Board satisfies certain criteria. The Administrator must establish performance schedules with all applicants, and impose penalties for failure to meet such schedules. The Administrator must also enforce compliance with this Act and the provisions of a loan guarantee.

The Board is required to establish rules governing defaults on loans guaranteed under the Act. In the event of default, all property or related interests must be sold or disposed of in an orderly and efficient manner so as to maximize return to the taxpayer. The Administrator is authorized to accept property as payment of amounts owed to the United States, but only to the extent that the obligation is not fully satisfied by cash.

The Board is required to charge and collect an application fee, and must also charge a loan origination fee. The fees collected under the Act shall offset its administrative costs. Affiliates of an applicant must indemnify the United States for any losses incurred by the United States.

Notwithstanding any other provision of law, if any person or entity indebted to the United States as a result of this Act files for bankruptcy protection, the person's or entity's debts due to the United States must be satisfied first. A discharge in bankruptcy will not release a person or entity from obligations under this Act.

Section 6. Prohibition on use of funds for spectrum auctions

Section 6 provides that no loan guarantee under this Act may be granted or used to provide funds for the acquisition of licenses for the use of spectrum in an FCC auction.

Section 7. Prohibition on use of funds by incumbent cable operators

Section 7 provides that no loan guarantee under this Act may be granted or used to provide funds for either (1) the extension of any cable system to any area or areas for which the cable operator of such cable system has a cable franchise, if such franchise obligates the operator to extend such system to such area or areas; or (2) the upgrading or enhancement of the services provided over any cable system, unless such upgrading or enhancement is principally undertaken to extend services to areas outside of the previously existing franchise area of the cable operator.

Section 8. Annual audit

Section 8 requires the General Accounting Office (GAO) to conduct an annual audit of (1) the loan guarantee program, and (2) the financial position of each applicant who receives a loan guarantee under this Act, including the nature, amount, and purpose of investments made by the applicant. The GAO is required to submit a report of each audit to Congress.

Section 9. Exemption from must carry requirements

Section 9 establishes that a facility of a satellite carrier, cable system, or other multichannel video programming distributor that is financed with a loan guaranteed under this Act and that delivers local broadcast signals in a television market pursuant to the provisions of section 338, 614, or 615 of the Communications Act of

1934 (47 U.S.C. §§ 338, 534, or 535) is not required to carry in such market a greater number of local broadcast signals than the number of such signals that is carried by the cable system serving the largest number of subscribers in such market.

Section 10. Additional availability of broadcast signals in rural areas

Section 10 directs the FCC to open a filing period window for the acceptance of applications for television translator stations and low-power television stations in rural areas.

Section 11. Prevention of interference to satellite services applying for rural loan guarantees

Section 11 forbids the Board from approving a loan guarantee under the Act until the FCC has determined on the basis of a technical demonstration or, if infeasible, an analysis, that any terrestrial service proposing to operate in the satellite broadcast frequency band will not cause harmful interference to any satellite service eligible for a loan guarantee under the Act.

Section 11 also requires that the technical demonstration or analysis be both conducted and analyzed by an independent engineering firm or other qualified entity. The independent demonstration and analysis must be subject to public notice and comment, and be completed within 90 days after the date of enactment. During that 90-day period, to ensure no harmful interference to eligible satellite services, the FCC is precluded from allocating spectrum for, or issuing licenses to, any terrestrial service proposing to operate in the satellite broadcast frequency band.

Section 12. Improved cellular service in rural areas

Section 12 directs the FCC to tentatively reinstate three applicants that intend to provide much-needed cellular competition in Pennsylvania, Minnesota, and Florida, and to permit each applicant to amend its application to update factual information and to comply with the rules of the FCC. The Committee notes that this problem has persisted for ten years, and will help to ensure that valuable spectrum is put to its highest, best, and fullest use.

Section 13. Technical amendment

Section 13 is intended to correct an oversight from the Satellite Home Viewer Improvements Act that has led to unnecessary confusion for many consumers. Among other things, SHVIA clarified the circumstances under which DBS subscribers are eligible to receive distant network signals. SHVIA specifically established procedures under which subscribers who are presumptively ineligible to receive distant network stations may ask for a waiver of that ineligibility from their local broadcaster, or should that request be denied, arrange for their eligibility to be determined on the basis of a signal strength test conducted at the subscriber's residence.

Unfortunately, for many consumers, the right to seek a waiver has been frustrated by some local broadcasters who are narrowly interpreting their right to do so. Specifically, SHVIA provides that a consumer's request for a waiver must be conveyed to the local broadcaster by a "satellite carrier," which under SHVIA is defined

as a facilities-based satellite operator that has a direct relationship with the consumer (*e.g.,* DirecTV or EchoStar).

The problem is that more than a million consumers subscribe to DBS service through a retail distributor that has a wholesale contractual arrangement with carriers like DirecTV, and as such, lacks the requisite facilities to qualify as a "satellite carrier" as that term is presently defined in SHVIA. Nevertheless, these retail distributors have unique relationships with their consumers in the billing, collection, activation and deactivation of their customer's satellite service. Moreover, from the consumers' perspective, these distributors are no different than facilities-based distributors. Congress never intended, and is disappointed to learn, that some local broadcasters would refuse to consider a consumer's waiver request based upon whether the entity is facilities-based. Section 13 therefore clarifies that, for purposes only of consumer requests of a waiver from SHVIA's distant signal eligibility requirements, the term "satellite carrier" shall include a retail distributor, provided the distributor serves the subscriber and engages in basic subscriber functions such as billing, collecting, activating service accounts and service changes.

Section 14. Definitions

Section 14 defines certain terms.

Section 15. Authorization of appropriations

Section 15 authorizes appropriations for both the cost of the guaranteed loans and the cost of the administering the loan guarantee program.

Section 16. Sunset

Section 16 prohibits the Board from approving any loan guarantee under this Act after December 31, 2006.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 339 OF THE COMMUNICATIONS ACT OF 1934

SEC. 339. CARRIAGE OF DISTANT TELEVISION STATIONS BY SATELLITE CARRIERS.

(a) * * *

* * * * * * *

(c) ELIGIBILITY FOR RETRANSMISSION.—

(1) * * *

* * * * * * *

(5) DEFINITION.—Notwithstanding subsection (d)(4), for purposes of paragraphs (2) and (4) of this subsection, the term "satellite carrier" includes a distributor (as defined in section 119(d)(1) of title 17, United States Code), but only if the sat-

ellite distributor's relationship with the subscriber includes billing, collection, service activation, and service deactivation.

* * * * * * *

DISSENTING VIEWS

INTRODUCTION

I share the goals of the sponsors of H.R. 3615 to ensure the speedy deployment of television service and new technologies to rural America. Where we differ is on how best to get there. H.R. 3615 chooses the wrong path: it will actually inhibit competition and retard the deployment of new technologies in rural areas.

H.R. 3615 keeps in place the onerous government mandates that now preclude satellite broadcasters and other television providers from delivering local television signals into small and rural markets. Instead, the bill proposes to have the government "solve" this problem of its own making by creating a new $1 billion subsidy program—in the process further injuring the very market that would gladly serve rural America of its own accord if the government wasn't already standing in the way.

Adding insult to injury, the bill puts a 70-year-old federal bureaucracy within the U.S. Department of Agriculture, which has no television technology expertise, in charge of administering the new $1 billion subsidy program. The "Rural Utilities Service" (the renamed Rural Electrification Administration, a notoriously wasteful and outmoded bureaucracy now in search of a new mission) has—to quote from Rep. Markey—"perhaps the worst record in U.S. history of the public or private sector in the administration of loan programs." These government bureaucrats will now play high-tech venture capitalist, using taxpayer dollars to pick one winner in a market (and thus also to pick many losers, who won't get subsidies and won't want to enter the market against a subsidized competitor). From among the many current and would-be competitors trying to deliver local television service to any given rural market, only one will be blessed with federal largesse.

The result will be disastrous:

- Even if satellite technology wins the government subsidy lottery (as seems likely), satellite companies will now face unfair competition from a government-run or government-subsidized satellite venture.
- Worse, government regulations will continue to hinder satellite companies from delivering local television service to smaller markets.
- Taxpayers will lose several hundreds of millions (and potentially a billion) dollars if the government's technology bets and business decisions don't pay off (as the Congressional Budget Office predicts they won't).
- A dinosaur of a federal agency that might otherwise finally be on the verge of being shut down will instead be given new life.

Worst of all, the bill seems certain to subsidize existing rather than new technology, which in turn will dissuade new entrants

from developing new, more effective, and less expensive ways to deliver local TV signals—and other digital services—to rural communities.

I. I'M WITH THE GOVERNMENT AND I'M HERE TO HELP

"I'm with the government and I'm here to help" is a phrase that Americans have learned to regard with great suspicion. They've learned that often many of the problems the government is trying to solve, it has in fact helped to create. The story is no different when it comes to the delivery of local TV broadcasts to small cities and rural areas.

In 1999, when Congress finally made it legal for satellite broadcasters to transmit local TV signals ("local-into-local" service), there was a major catch. The law contains a burdensome mandate: in order to carry *even one* local TV signal in a market, a satellite broadcaster must carry *all* local TV signals in that market. This draconian mandate is called "must-carry."

What it means is that a satellite broadcaster who wants to include a local station in Los Angeles can only do so if it agrees to carry *all* the local TV stations throughout the LA region. This is true no matter how few viewers some of the stations might have, or how lousy the quality of their programming. In Los Angeles, must-carry covers 23 government-mandated stations that Uncle Sam, not the marketplace, requires you to buy.

Small cities and rural areas pay most dearly for this must-carry mandate, in the form of lost service. Because satellite capacity is limited, having to carry all 23 stations in order to serve Los Angeles means 23 fewer channel slots on the satellite system. Because there are so many local TV stations in the top 20 to 30 markets, and because no satellite provider would ever give up Los Angeles or New York to serve a small rural market, there just isn't room for satellites to add local stations in rural areas. Today, as a result of must-carry, the nationwide capacity for the major satellite broadcasters is completely filled up in serving just the large markets.

The federal mandates that cause smaller media markets to go unserved are blatantly unfair to residents outside of big cities. In practice, the must-carry law says it is more important for a resident in Los Angeles or New York to receive all 23 local TV stations than it is for a resident of Roanoke, Buffalo, Louisville, or Omaha to get even a single channel of local content.

Today, the major satellite broadcasters deliver local-into-local signals to 50% of the nation's population. If it weren't for the must-carry law, satellite broadcasters told the Commerce Committee that they would have enough capacity on their satellites to *immediately* expand local-into-local service to *80 million Americans* in smaller markets.

II. IF IT MOVES, TAX IT. IF IT KEEPS MOVING, REGULATE IT. AND IF IT STOPS MOVING, SUBSIDIZE IT

President Ronald Reagan summed up the typical Washington view of economic policy as follows: "If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it."

President Reagan's aphorism is nowhere better applied than to today's bill subsidizing television in small markets—a "solution" to a problem government created in the first place. The government, of course, steeply *taxes* the satellite broadcasters who will now simultaneously be subsidized to overcome their "capital shortage." It *regulates* satellite broadcasters so heavily that they can't broadcast to smaller markets. And now the government will *subsidize* broadcasts to smaller communities, because the "market" has "failed." The $1 billion loan subsidy program will, in turn, force higher-still taxes on millions of working Americans, almost none of whom will get the subsidized TV they're paying for.

While no specific platform for delivering the TV service is mentioned, the sponsors of the legislation have made it clear that they intend the loans to be used to finance the construction and launch of a new satellite television service. This will put the government, and taxpayers, in the satellite TV business. But the commercial satellite business is extremely risky. And Congressional Budget Office Director Dan Crippen testified on March 16, 2000 that the new $1 billion loan program, just like the underlying industry, "is likely to prove financially and technically risky." CBO concluded, after consulting with industry experts and financial analysts, that the likely default rate for the loans will be *between 30% and 45%*. This will result in losses to taxpayers of hundreds of millions of dollars. Unfortunately, the Commerce Committee defeated a number of amendments offered at Subcommittee and full Committee markup that would have reduced taxpayers' exposure.

III. A "DINOSAUR" ENTERS THE INFORMATION AGE

The agency charged by H.R. 3615 with administering this information-age loan program is not up to the task. The Rural Utilities Service, a branch of the U.S. Department of Agriculture, is a 70-year-old bureaucracy with no specialty in television or satellites, but with one salient feature above all others: a disastrous loan management track record that has caused taxpayers to suffer billions of dollars of write-offs and losses.

A quick look at the track record of the Rural Utilities Service should leave taxpayers worried indeed about giving billions more to the RUS for this new program:

• *The RUS makes loans to people who can't even get a business off the ground with a federal subsidy.* In just the last five years, the U.S. Department of Agriculture has been forced to write off nearly *$2 billion* in money owed to taxpayers by RUS borrowers who have gone belly up. The GAO has identified another $8 billion in loans—roughly one-fifth of RUS's outstanding loan portfolio—that are not likely to be collected because the borrowers are in bankruptcy or "experiencing serious financial difficulties."

• *If RUS loans aren't written off, it's because they've been made to people who don't need them.* According to the March 16, 2000 testimony by the USDA's own Inspector General: "[H]alf of RUS telephone borrowers are in strong financial condition. * * * good enough financial condition to satisfy their credit needs from their own financial organizations or from other credit sources." A 1998 GAO report also concluded that RUS loans are often made to "financially healthy borrowers that may not need federal assistance.

* * * 56 percent of the borrowers had equity—total assets less liabilities—of $10 million or more at the end of the year prior to receiving the loans."

• *The RUS makes loans for purposes other than what Congress intended.* While the clear purpose of the Rural Electrification Act is to promote development in rural and unserved areas, many RUS loans have gone to support service to wealthy communities far removed from the "little house on the prairie." The Office of Management and Budget found that RUS loans have been used to subsidize electricity bills for the residents of such "needy" communities as Aspen, Vail, and Hilton Head, and for such "rural" areas as Atlanta, Minneapolis, and Nashville. The USDA's Inspector General testified before the Committee that RUS borrowers "have not become major players in financing America's rural infrastructure, despite the fact that these borrowers hold almost $11 billion in total investments. Disappointingly, only one-half of one percent of this amount—about $61 million—is actually invested in rural America."

President Reagan also once said that the closest thing to eternal life on earth is a government bureaucracy. Once America's farms were hooked up to electricity and telephones, the Rural Electrification Administration was a bureaucracy without a purpose. That has never retarded its growth, however. With its recent name change to the "Rural Utilities Service" and a potential new venture into satellite TV and maybe even cyberspace, the 70-year-old RUS will surely outlive us all.

IV. BUREAUCRATS AS VENTURE CAPITALISTS

By far the biggest failing of H.R. 3615 is that it would put the government in the business of speculating—with taxpayer dollars—on which financial risks in the television technology marketplace are likely to be "winners" and "losers." It is foolish to think that the government can do a better job of allocating risk capital than the free market does. Yet this is the presumption of H.R. 3615.

The original mission of the RUS—providing electricity and telephone service to farms that didn't already have service—was a technologically simple one. First, there was no competition to worry about: electric utilities and the phone company were monopolies. Second, the technology was static: electricity was electricity, and phones were phones.

By contrast, today's television technology is not plain vanilla. There are an endless variety of flavors, from wireless cable to Internet broadcasting to digital cable to satellite broadcast to TV service offered by your electric or phone company—not to mention a dozen new technologies currently in incubation. Asking bureaucrats and political appointees at the U.S. Department of Agriculture to step into this rapidly changing marketplace and figure out whom to subsidize is a recipe for disaster. It will coddle inefficiency and subsidize losers, promote unwanted services, sustain old technologies, impose high-cost solutions, and create new monopolies—all the while retarding the advancement of technologies that could solve today's rural TV service problem far better than any government program.

Here is a business question that RUS might ask themselves for starters: Is the consumer demand for satellite delivery of *local* TV

signals sufficient to make a profit in the current regulated environment? The answer to this question is critical, as the argument mustered by supporters of H.R. 3615 is not that rural America cannot receive *any* television signals. (In fact, the main reason satellite TV came of age over the last two decades is that it can provide nationwide service to rural areas that would be too costly to wire for cable service.) Rural households can *already* receive scores of channels of television programming via satellite service or cable TV. In fact, the availability of numerous national TV signals like CNN, ESPN, and the Weather Channel in rural markets is often advanced as an explanation of the sluggish demand for local TV signal in those same markets.

Moreover, *most* rural households can *already* receive local TV signals *for free* via over-the-air broadcast. Whether consumers in rural areas will be willing to pay for satellite delivery of local signals (and *only* pay TV will be subsidized under H.R. 3615) is another matter. Yet H.R. 3615 simply takes it for granted that millions of consumers will do so.

This is an extremely risky assumption. According to Congressional Budget Office estimates, satellite providers will need to acquire 1.6 million new rural customers paying $6 a month for local TV service *merely to cover debt service* on $1 billion in loans. But CBO notes that the *total* number of homes that cannot now receive local TV service is only 3 million nationwide.

Moreover, paying back the principal on the loan is another matter altogether. The second largest satellite television company in America today still loses money after five years of operation, even though it has 3.4 million subscribers. Can the technological expertise and business savvy of a 70-year-old federal agriculture bureaucracy acquire more subscribers than EchoStar?

The 25-year term of the loans to be issued under H.R. 3615 further assumes that what we know today as "television" will remain static. But it is far from obvious that in five years—let alone 25—consumers will prefer their local news, sports, and weather information to be packaged as they are today on television programs, rather than in the many new formats currently being tested on the Internet. Is it unreasonable to think that farmers might actually someday soon get TV over the Internet? If so, would you want to make a $1 billion, 25-year bet on the older technology the Internet wiped out?

If this loan program were set up 100 years ago, the government might today be subsidizing home newspaper delivery to rural areas. But just as television replaced newspapers as the primary local news source for much of America, so too the Internet might one day soon replace traditional television broadcasts as the primary source for local news. Undoubtedly, there are other technologies not yet on the market that might soon supplant even the Internet.

The sponsors of H.R. 3615 have made it clear that they intend the loans to be used primarily to start up a new satellite television service. But transmission of high-quality digital TV signals can be carried over a variety of different technologies—from copper wire to fiber optics, from satellites to terrestrial fixed wireless, and over electricity wires. As more and more companies roll out newer and

faster data services to rural areas, any number of new technologies will likely prove better and cheaper means of serving rural markets. Who is the government to say that it knows for certain the best way to deliver TV to rural America?

CONCLUSION

The world of technology is complex, fast-changing, and unstructured. H.R. 3615 unwisely presumes that the government should play the role of high-tech venture capitalist. The bill is likely to coddle inefficient and high-cost enterprises, rather than subjecting them to the discipline of the capital markets and of consumers. It is likely to produce significant losses for taxpayers. And it will result in subsidies for existing technologies, inhibiting the development of innovations that could deliver, at cheaper prices, improved services for residents of rural and urban America alike.

During markup in the Commerce Committee, one of our colleagues offered an amendment to expand this ill-advised subsidy program from $1 billion to $4 billion—and to add "digital services" including the Internet as potential objects of the government's affection. It is very clear where this kind of thinking, like another well-known road, will lead.

CHRISTOPHER COX.

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